

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ISAAC SCOTT CASTANEDA,)	Case No.: 1:20-cv-00377-JLT-HBK (HC)
)	
Petitioner,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS, GRANTING
v.)	MOTION TO DISMISS, DENYING
)	PETITION FOR WRIT OF HABEAS
THERESA CISNEROS,)	CORPUS, DIRECTING CLERK OF COURT
)	TO CLOSE CASE, AND DECLINING TO
Respondent.)	ISSUE CERTIFICATE OF APPEALABILITY
)	
)	(Docs. 1, 24, 36)

The assigned magistrate judge issued Findings and Recommendations recommending that Respondent's Motion to Dismiss be granted, and the Petition be dismissed as untimely. (Doc. 36.) The Court served the Findings and Recommendations on all parties. It contained notice that any objections thereto were to be filed within 14 days after service. In addition, the Court advised the parties "that failure to file objections within the specified time may result in the waiver of rights on appeal." (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). Petitioner has not filed objections, and the time for doing so has passed.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire matter, the Court finds the magistrate judge's Findings and Recommendations are supported by the record and proper analysis.

1 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
2 district court's denial of his petition, and an appeal is only allowed in certain circumstances.
3 *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. If a court denies a habeas
4 petition on the merits, the court may only issue a certificate of appealability “if jurists of reason
5 could disagree with the district court’s resolution of [the petitioner’s] constitutional claims or that
6 jurists could conclude the issues presented are adequate to deserve encouragement to proceed
7 further.” *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the
8 petitioner is not required to prove the merits of his case, he must demonstrate “something more
9 than the absence of frivolity or the existence of mere good faith on his . . . part.” *Miller-El*, 537
10 U.S. at 338.

11 The Court finds that reasonable jurists would not find the Court’s determination that the
12 Petition should be denied debatable or wrong, or that the issues presented are deserving of
13 encouragement to proceed further. Petitioner has not made the required substantial showing of the
14 denial of a constitutional right. Therefore, the Court declines to issue a certificate of appealability.
15 Based upon the foregoing, the Court **ORDERS**:

- 16 1. The Findings and Recommendations issued on August 25, 2022, (Doc. 36), are
17 **ADOPTED** in full.
- 18 2. Respondent’s Motion to Dismiss (Doc. 24) is **GRANTED**.
- 19 3. The petition for writ of habeas corpus (Doc. 1) is **DENIED**.
- 20 4. The Court declines to issue a certificate of appealability.
- 21 5. The Clerk of the Court is directed to close the case.

22
23 IT IS SO ORDERED.

24 Dated: **September 27, 2022**


UNITED STATES DISTRICT JUDGE